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VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW,
Room TWB 204,
Washington, DC 20554

Re: *Ex Parte*, WC Docket No. 02-112, Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; CC Docket No. 00-175 2000 Biennial Regulatory Review, Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules

Dear Ms. Dortch:

This *ex parte* filing responds to the December 16, 2003 filing by SBC Telecommunications Inc. ("SBC"). That filing fails to rebut the showing by AT&T Corp. ("AT&T") on November 26, 2003 that bundled local and long-distance services should be treated as a relevant product market for analysis of BOC market power, as the Commission anticipated in 1997. As demonstrated below, bundled local and long-distance services qualify as a relevant product market under all applicable tests.

In any event, no BOC in-region long distance services provided on an integrated basis after the sunset of section 272 -- bundled or unbundled -- should be exempt from the Commission's Rule 61.58 requirement that "dominant carriers file tariffs setting forth the prices, terms and conditions for their interstate telecommunications services."[1] SBC and other BOCs indisputably are dominant carriers because of their local bottlenecks. Moreover, the ease with which BOCs may leverage their local bottlenecks into in-region long-distance -- and the irrelevance of claims that they purportedly have "no incentive" to engage in price squeezes -- is highlighted by SBC's recent boast to its investors that it has "a cost advantage over

[1] *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd. 27,000, ¶ 18 (2002). *See also*, 47 C.F.R. Section 61.58(a)(2)(i).

AT&T, MCI and others because they buy a lot of their local access from us or the other regional Bell companies."

SBC's claim that recent announcements of new VoIP services require integrated BOC in-region long distance services to be reclassified as nondominant has no basis. It is much too early in the development of VoIP services for VoIP to prevent BOCs from exploiting the huge anticompetitive advantages they obtain in long distance markets by abusing their control of the local bottleneck. Further, VoIP itself is currently available only to those with broadband connections -- a small subset of telecommunications users -- and even there is partially subject to BOC local bottlenecks over DSL.

1. <u>Bundled local and long-distance services are a relevant product market.</u>

At the request of the Staff, AT&T demonstrated in its November 26, 2003 *ex parte* filing that a bundle of local and long-distance services constitutes a relevant product market under the analytical framework set forth in the DOJ/FTC *Horizontal Merger Guidelines* because a hypothetical monopolist could profitably impose a "small but significant and nontransitory increase in price." Such a price increase would be profitable notwithstanding the availability of non-bundled services because (a) the price of bundled local and long-distance services is substantially less than the aggregate of the *a la carte* prices of its various components (as is the case with all BOC "all distance" offerings), (b) customers purchasing bundles with "unlimited" long distance calling may have a preference for simple and predictable pricing that would make them less likely to switch to unbundled services in response to "a small but significant and nontransitory increase in price" of the bundle, and (c) local and long-distance services can be provided at significantly lower costs in a bundle than where they are provided separately because of the high costs of customer acquisition, customer care, billing and access. (AT&T *ex parte* at 1-2.) Furthermore, the Commission expressly anticipated, as long ago as 1997, that "to the extent consumer demand for bundled service packages forces carriers to offer such bundles, the bundling of local exchange and exchange access services with long distance services may well become a relevant product market."[2]

SBC's December 16, 2003 response ("SBC *ex parte*") fails to rebut AT&T's showing. Indeed, with respect to AT&T's first point above -- that the price of bundled local and long-distance services is substantially less than the aggregate of the *a la carte* prices of its various components – SBC offers no factual rebuttal at all. AT&T noted that Verizon's unlimited interLATA offering in its "all-distance" bundle is priced at $15, while the least expensive unlimited *a la carte* long distance plan is $30. (AT&T *ex parte* at 2, n.3.) SBC responds (p. 11) that "AT&T itself offers unlimited long distance, priced at approximately $30 per month" and, without further explanation, that "AT&T's first argument" is therefore "flatly wrong." In fact, the *a la carte* AT&T rate cited by SBC plainly supports AT&T's point. Nor is AT&T "conveniently ignoring" other long distance offerings, as SBC also contends (*id.*). SBC's recent presentation at

[2] *Applications of NYNEX Corporation and Bell Atlantic Corporation*, 12 FCC Rcd. 19985, ¶ 52 (1997).

its 2003 analyst conference states that SBC's bundled price to consumers for "Unlimited LD" is just "$20."[3]

AT&T's second point -- that consumer risk-averse preferences for predictable long-distance bills would also allow a hypothetical monopolist to increase bundled prices for unlimited long-distance calling -- is supported by the recent CIBC World Markets report on flat-rate pricing and bundling, which is Attachment 1 to AT&T's *ex parte*. That report states that "flat-rate pricing and bundling represent significant drivers of secular improvement for the [BOCs] and local exchange companies" because "*consumers have always shown themselves to be risk-averse, preferring simplicity and set prices.*"[4] The CIBC report -- to which SBC makes no reference in its 26-page response -- describes "the trend towards flat rate bundling" as "inevitable," primarily because of strong consumer demand.[5]

The CIBC report shows that consumers seeking simple and predictable pricing plans are often willing to pay an additional amount for a flat-rate plan. The report states: "Consumers prefer subscription models (electric utilities, magazines, ISPs and wireless). Time and again, most consumers chose simplicity and predictability when given a choice. . . . *In the ISP market, <u>companies often found that a[n] $11-$15 subscriber would jump at a $20 per month plan</u>; while usage increased, so did profitability.*"[6]

Further evidentiary support for AT&T's point is provided by Qwest. In a January 21, 2004 interrogatory response before the Washington State Commission, Qwest states that toll "customers are willing to pay a premium for knowing their bill will never exceed the price of a plan that includes unlimited usage. *Therefore, some customers are willing to move to the unlimited usage plans even though their individual usage is less than the 'break-even point.'*"[7] Qwest goes on to state that "customers are acting in this manner in the marketplace."[8] Thus, contrary to the claims by SBC (p. 12), AT&T's argument that consumer preferences for predictability could make consumers less likely to switch to unbundled per minute long-distance services in response to a "small but significant and nontransitory increase in price" for bundled services is neither "unsupported" nor "illogical."

SBC makes no attempt to rebut AT&T's third argument showing why a hypothetical monopolist of bundled local and long-distance services could profitably increase prices -- that because of the high costs of customer acquisition, customer care, billing and access, local and long-distance services can be provided at significantly

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[3] SBC, 2003 Analyst Conference, Slide titled "Positioning for the Future: Consumer." (Attachment A hereto.)

[4] CIBC World Markets, *Opportunities for Flat-rate Pricing and Bundling, Industry Update:Telecommunications Services*, June 26 2003, at 3 (emphasis added).

[5] *Id.* at 3 & 11.

[6] *Id.* at 11 (emphasis added)

[7] Qwest Response to AT&T Interrogatory Request 02-158, Petition of Qwest Corporation to Initiate a Mass-Market Switching and Dedicated Transport Case Pursuant to the Triennial Review Order, Washington State Utilities and Transportation Commission, UT-033044, filed Jan. 21, 2004 (emphasis added).

[8] *Id.*

lower costs in a bundle than where they are provided separately. (AT&T *ex parte* at 2.) SBC does not dispute these facts, or even refer to them in its 26-page response -- although they clearly meet the requirement of SBC's legal test for the existence of a cluster market that "economies of joint provision (economies of scope) make distribution of the cluster cheaper per good than distribution of each separately." (SBC at 8.) Here again, AT&T's argument is strongly supported by the CIBC report, which emphasizes that when additional services are bundled with local exchange, the costs of customer acquisition, care and billing do not significantly increase above those that are already incurred to serve local exchange customers.[9] With bundled services, "per unit acquisition costs decline."[10]

Bundling is central to SBC's own consumer marketing strategy for similar reasons -- because bundling reduces customer "churn," and thus reduces customer acquisition costs. SBC Chairman and CEO Edward Whitaker told the recent SBC Analyst Meeting that "We've built a market strategy based on bundling, and it is generating positive results. We've aggressively ramped up growth in long distance and DSL, and those are key components in the bundle."[11] Similarly, SBC Group President for Marketing and Sales Rayford Wilkins stated: "The key . . . to our strategy is to bundle."[12] He said the "pay off" to SBC is that "[a]s you add additional products to the bundle, the impact on retention is enormous. Long distance alone reduces the rate of churn by 9%."[13]

The applicable legal test for finding a bundled market is well established: "The cluster concept is most appropriately used to group products or services that are functionally related (not interchangeable but complementary) and where the package of products or services has an appeal that is distinct from that of its components." (2 Von Kalinowsky, Antitrust Laws and Trade Regulation §24.02[3] at 24-78.12 to 24-78.13 (Feb. 2003).) Grouping individual products into a product cluster is appropriate if the product bundle appeals to consumers on a different basis from the individual products sold separately. (*JBL Enterprises, Inc. v. Jhirmack Enterprises, Inc.*, 698 F.2d 1011, 1016 (9th Cir.) *cert. denied*, 464 U.S.829 (1983).)[14]

The local and long distance bundle clearly meets this test. Local and long distance services for residential customers are functionally related, and the bundle clearly has an appeal that is distinct from that of its components. Indeed, BOCs have cited consumer demand for "one-stop-shopping" end-to-end service arrangements in

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[9] *Id.* at 16.
[10] *Id.*
[11] SBC Communications Analyst Meeting, Nov. 13, 2003, CCBN StreetEvents, Event Transcript, Final Transcript (Attachment B hereto) at 2.
[12] *Id.* at 4.
[13] *Id.* at 5. *See also id.* at 18 ("What we do know is that as we add additional items to the bundle, that churn goes down and we can measure it very scientifically.") Mr. Wilkins further highlighted the critical importance of bundling to SBC by stating: "This is the future of telecom." *Id.* at 5.
[14] Thus the full service feature of commercial banks led the Supreme Court to find a cluster of products and services as the relevant product market in *United States v. Philadelphia National Bank,* 374 U.S. 321, 356 (1963) and *United States v. Phillipsburg National Bank & Trust Co.,* 399 U.S. 350, 360 (1970). The rationale was that it is usually easier for consumers to obtain some services, e.g., loans, at the same bank where other services, e.g., savings accounts, are held.

support of their horizontal mergers.[15] Because of the specific consumer demand for one-stop-shopping all-distance arrangements, these arrangements qualify as a relevant product market irrespective of whether local and long distance services are offered at a single bundled price or priced separately. The absence of a single price is certainly immaterial where long distance is not provided on a stand-alone basis and is only made available to local service customers -- which is SBC's own practice, as the record shows.[16]

However, SBC is wrong in contending (p. 7) that cluster markets are restricted to those where consumers are "effectively require[d]" to purchase the clustered products together. As shown above, this proposed test is out of step with well-established precedent. "Courts . . . have recognized that a "cluster" of distinct products or services may be combined into a single relevant market, based principally on a consumer preference for provision of the products in a group. Such a preference may result from cost savings attributable to joint provision or convenience to customers from dealing with a single supplier."[17]

Therefore, it is irrelevant that local and long-distance services are "not substitutes." (SBC at 6.) SBC's own cited authority states that "it is well-established that under certain circumstances markets may be aggregated on a basis other than economic substitutability" (*U.S. v. AT&T*, 524 F. Supp. 1336, 1375 (D.D.C. 1981)), and SBC goes on to concede this point (p. 6). Judge Greene also noted "direct precedent for the combination of telecommunications equipment 'as diverse in function and cost as simple telephone instruments and complex central-office switching equipment' into one aggregate market on the grounds of industry recognition, coincidence of supplying firms, and the integrated nature of the telecommunications system." (*Id.* at 1376, citing *International Tel. & Tel. Co. v. General Tel. & Elec. Corp.*, 518 F. 2d at 934-35.) Similarly, the Commission stated -- in support of its prediction that bundled local and long distance services "may well" become a relevant product market as the BOCs enter in-region long distance markets -- that "it is well established that relevant markets in antitrust cases may be bundles of services."[18]

There also is no basis for SBC's claim (p. 7) that there must be "*market power* over each of the goods in the cluster." (Emphasis added.) Product markets do not exist only where a supplier is first shown to have market power, and SBC puts the cart before the horse by claiming otherwise. Rather, the test for the existence of a product market of bundled local and long-distance services under the DOJ/FTC Merger Guidelines is whether a hypothetical monopoly provider of bundled local and long-

[15] *See Applications of Ameritech & SBC Communications, Inc.*, 14 FCC Rcd. 14712, ¶ 74 (1999) ("In a number of recent merger applications before the Commission, prior applicants have pointed to consumers' demand for 'one stop shopping' and/or end to end service that is in part justifying these Applicants' merger plans"); *id.*, n.158 ("According to the Applicants, this demand stimulated in part their merger plans."); *Application of GTE Corp.*, 15 FCC Rcd. 14032, n. 259 (2000). *See also, Applications of NYNEX Corp. & Bell Atlantic Corp.*, 12 FCC Rcd. 19985, ¶ 52 (1997) ("Applicants clearly contemplate providing 'one stop shopping' to their customers.").
[16] *See* AT&T Comments at 32.
[17] ABA Antitrust Section, Antitrust Law Developments (3d ed. 1992) at 289.
[18] *Applications of NYNEX Corporation and Bell Atlantic Corporation*, 12 FCC Rcd. 19985, ¶ 52, n.16.

distance services could profitably raise price notwithstanding any competition from unbundled local and long-distance services. Thus the relevant question, as stated by another of SBC's cited cases, is whether bundled local and long-distance services "*if unified by a monopolist or a hypothetical cartel* would have market power." (*Image Technical Services, Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1203-04 (9th Cir. 1997) (emphasis added). Because a hypothetical monopolist over bundled local and long-distance services could exercise market power for the reasons described above, these bundled services accordingly must constitute a relevant product market.

Just as product markets do not exist only where an existing supplier already has market power, it is also irrelevant that existing sellers have not "increase[d] their prices for bundles" to monopoly levels. (*See* SBC at 8.) The DOJ/FTC Guidelines product market analysis is based on "prevailing prices" and generally determines the effect of a "small but significant and nontransitory" price increase by using "a price increase of five percent lasting for the foreseeable future."[19] In any event, any absence of "evidence of supracompetitive pricing by BOCs for long distance services" (SBC at 18) is hardly dispositive while the BOCs seek to grow their long-distance market shares by reducing prices. SBC Group President for Marketing and Sales Rayford Wilkins told the recent SBC Analyst Meeting that SBC has made "*a conscious decision to reduce prices today in order to retain our customers*."[20] Similarly, SBC Chairman and CEO Edward Whitaker stated that "[t]o drive growth in bundles and strengthen our competitive position long-term, we said we needed to be more aggressive on pricing."[21]

As a result, SBC's consumer long-distance market shares are growing at record rates. SBC's Mr. Wilkins stated at the Analyst Meeting that "we've achieved 32% in the consumer market in California in just nine months and 54% in the Southwest in just over three years."[22] SBC expects this success can be "even surpassed" in the Midwest states where it has more recently obtained Section 271 authorization.[23] Mr. Whitaker told the same meeting that "[w]e expect consumer retail long-distance penetration of more than 40% companywide by next year [*i.e.*, 2004]."[24]

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[19] DOJ/FTC Horizontal Merger Guidelines, Section 1.11.

[20] SBC Communications Analyst Meeting, Nov. 13, 2003, Final Transcript at 3 (emphasis added). Mr. Wilkins underscored the importance of this point by repeating it virtually word-for-word later in his presentation. *Id.* at 5 ("Let me wrap up the consumer initiatives by reminding you that our approach really reflects a conscious decision to take some margin concession today in order to retain our customers and then build on those relationships over their in-service life.")

[21] *Id.* at 2.

[22] *Id.* at 4. SBC indicated that it has approximately 60 percent of the consumer long-distance market in Texas, where Section 272 requirements have already sunset. SBC, 2003 Analyst Conference, Slide titled "Rapid LD Consumer Adoption." (Attachment A hereto.) Thus, if the presumption used by the Commission's international dominant carrier rules that all carriers with over 50 percent shares of foreign domestic long-distance markets possess market power applied here, SBC would be presumed to exercise market power in Texas based on its long-distance market share alone -- even without consideration of SBC's control of local bottleneck facilities. *See* AT&T Comments, filed Jun. 30, 2003, at 11 & n.22; 47 CFR §. 63.10; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd. 23891, ¶ 161 & n. 312 (1997).

[23] *Id.*

[24] *Id.* at 13.

2. BOC local bottlenecks are readily leveraged into long-distance services.

Under longstanding Commission precedents, SBC's local bottleneck itself "confers market power" and "is prima facie evidence of market power."[25] The Commission confirmed in the Triennial Review Order that competitive carriers have no alternatives to BOC facilities to reach most residential and enterprise customers because self-deployment is uneconomic in the vast majority of circumstances.[26] As the Supreme Court has noted, it is "easy to see why" an incumbent local carrier "would have an almost insurmountable competitive advantage" in long-distance.[27]

AT&T has provided extensive details in this proceeding of discrimination, cost misallocation and price squeezes resulting from BOC control of local bottlenecks that would be further encouraged by BOC provision of local and long-distance services on an integrated basis after the sunset of Section 272 separate affiliate requirements.[28] (*See also*, Federal State Joint Conference on Accounting Issues, Recommendation, Oct. 9, 2003 (warning of "increase[d] . . . risk of cost-shifting").) For example, the BOCs derive huge advantages in marketing long-distance services from their "first access" to 90 percent of local exchange customers -- and from their continued ability to make telemarketing calls to these and to all "recently lost" local exchange customers, while competitive carriers are prevented from telemarketing to most of these customers by "do not call" restrictions. (AT&T *ex parte* at 3, 6.)

While SBC (p. 23) attempts to dismiss these concerns as "irrelevant," SBC executives at the recent SBC analyst meeting highlighted SBC's advantages in long-distance markets because of its local dominance. In discussing SBC's plans for small business, SBC Group President for Marketing and Sales Rayford Wilkins underscored that "the most significant item on this chart is our 68% market share of local voice because it really points to existing customer relationships which is a tremendous market advantage for us as we go after long distance voice and data."[29] Similarly, in discussing large and medium business, he emphasized the importance of SBC's "dominant share of local voice."[30]

Notably, SBC made clear to these investors that SBC obtains a critical cost advantage in long-distance markets from its competitors' dependence on SBC local access services. Mr. Wilkins stated:

> "When you look at it overall, the last mile or the presence at the local level really determines a lot of the cost factors. When you start looking at the long haul network, the incremental cost is very, very small.

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[25] *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, 85 F.C.C.2d 1, ¶ 58 (1980).
[26] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, rel. Aug. 21, 2003, ¶¶ 222, 237-40, 298 & n. 856, 311, 320, 325 (2003).
[27] *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1662 (2002).
[28] AT&T Comments at 23-45; AT&T Reply Comments at 18-22.
[29] SBC Communications Analyst Meeting, Nov. 13, 2003, Final Transcript at 5.
[30] *Id.* at 5, 6.

> "One of the reasons we're focusing on those customers that have a lot of their locations in our territory is because as you look at a combined network, both in region and out of region, *we believe that we have a cost advantage over AT&T, MCI and others because they buy a lot of their local access from us and or the other regional Bell companies*."[31]

SBC's acknowledgement that its competitors' dependence on SBC local access gives SBC a distinct cost advantage in long-distance belies the claims to the contrary by SBC and other BOCs.[32] Mr. Wilkins' statement also demonstrates that so-called "opportunity cost" theories put forward in this proceeding by SBC and its economists -- claiming that "there is simply no economic incentive to engage in a price squeeze, even if access charges were to exceed economic cost, because BOCs and ILECs will still lose the access revenue"[33] -- have no relevance to SBC's actual conduct in the marketplace. That is because SBC can use its access "cost advantage" to gain long-distance customers only if SBC's long-distance prices do *not* include the same access prices paid by AT&T and MCI.

The Commission's "rules require that dominant carriers file tariffs setting forth the prices, terms and conditions for their interstate telecommunications services" and that "dominant carriers include supporting information, which may include detailed cost data, in their tariff filings."[34] Because of the ease with which the upstream local bottlenecks of SBC and other BOCs may be leveraged downstream to advantage their rapidly growing in-region long-distance businesses -- such as by exploiting the anticompetitive local access cost advantage SBC highlighted above -- there is no basis for exempting BOC long distance services provided on an integrated basis after the sunset of section 272 separation requirements from the dominant carrier tariff filing and cost support rules.[35] As AT&T has described, service by service imputation requirements and other modifications in dominant carrier cost support requirements are also necessary to ensure that BOCs do not use their bottleneck local access services to engage in price squeezes and anti-competitive cross-subsidization.[36]

3. VoIP and wireless will not prevent the exercise of BOC market power.

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[31] *Id.* at 14 (emphasis added).

[32] SBC Reply Comments at 37-38; BellSouth Reply Comments at 8-10; Qwest Reply Comments at 11-13; Verizon Reply Comments at 19-24.

[33] SBC Reply Comments at 38. *See also* Reply Declaration of Dennis W. Carlton, Hal Sider & Allan Shampine, ¶¶ 5-11. Although Mr. Wilkins' comments addressed IXCs' reliance on SBC local access to serve business customers, they are equally applicable to IXCs' reliance on SBC switched access to serve consumers.

[34] *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, 17 FCC Rcd. 27,000, ¶ 18.

[35] SBC wrongly contends (p. 2, n.3) that AT&T does not argue that the BOCs are dominant in long distance services provided to large and medium business customers. AT&T's Comments and Reply Comments make clear that dominant carrier regulation is required for all services in which the BOCs can leverage their local bottlenecks, including those provided to medium and large business customers. Moreover, the comments by Mr. Wilkins at the SBC analysts meeting acknowledge that SBC is "focusing" on certain business customers to exploit this anticompetitive "cost advantage."

[36] AT&T Comments, filed Jun. 30, 2003, at 50 & n.165.

SBC attempts to divert attention from its critical "last mile" bottleneck, and from its rapid gains in long-distance market-share, by pointing to intermodal competition from VoIP and wireless services. SBC (p. 3) goes so far as to claim AT&T acts with "duplicity" by failing to discuss VoIP in AT&T's responses to Staff questions on other subjects. In fact, AT&T has emphasized in this proceeding, unrebutted by SBC's hyperbole, that "Voice over IP is in its infancy and -- in its most competitive form -- requires broadband Internet access, and local telephone lines are also the only source of "broadband" Internet services for the 30 percent of U.S. homes for which cable modem service is unavailable and for small business customers, which rarely have access to cable."[37] Consequently, many residential customers and most small businesses have no alternative to DSL for broadband Internet services, which is largely provided by the ILECs. For example, SBC claims to be "clearly the largest DSL provider" and that "within our footprint, we are at parity with cable modem."[38] The BOCs, therefore, are able to use their local bottlenecks to limit the competitiveness of VoIP by charging higher DSL prices to consumers not purchasing their phone packages.[39]

The CIBC World Markets report, Attachment 1 to AT&T's *ex parte*, states that "[t]he RBOCs' flat rate pricing is a way to minimize market share losses" to VoIP, and that "bundling significantly mitigates the threat to the RBOCs" from VoIP "because the price of a $39 unlimited VoIP plan, which requires a broadband connection, is essentially comparable to an RBOC's all-you-can-eat plan, once broadband, wireless and ultimately video is packaged in the bundle."[40] The report further notes: "if local connectivity costs are excluded, VOIP really is not that much cheaper to operate than switched services; VOIP will really take off when new unique applications are created."[41] Thus, it is much too early to rely on this incipient form of intermodal competition to prevent BOC leveraging of their local bottlenecks. According to the CIBC report, the local network will remain "the critical building block of network-centric communication service over the next decade, which affords the RBOCs other unique advantages to create differentiated services."[42]

The BOC local bottleneck also extends to the other source of intermodal competition touted by SBC and other BOCs -- wireless services. AT&T Wireless has underscored, unrebutted by SBC and other BOCs, that wireless carriers are also highly dependent on ILEC local bottleneck facilities to connect end users to their points of presence and to carry traffic between their switches and the cell stations where

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[37] AT&T Reply Comments, filed July 28, 2003, at 17.

[38] SBC Communications Analyst Meeting, Nov. 13, 2003, Final Transcript at 4.

[39] *See* http://www.fastaccess.com/content/consumer/products.jsp (Bell South "Fast Access" DSL with "Base Price" of $49.95 offered at a lower "Price for BellSouth Unlimited Long-Distance Plan Customers" of $39.95); http://www.qwest.com/residential/products/dsl/index.html (higher DSL price where a "home phone package" is not purchased); http://www22.verizon.com/forhomedsl/channels/dsl/package+price.asp (higher DSL price where Verizon's "Freedom" local and long-distance package is not purchased).

[40] CIBC World Markets, *Opportunities for Flat-rate Pricing and Bundling, Industry Update:Telecommunications Services*, June 26 2003, at 11, 12.

[41] *Id.* at 12.

[42] *Id.* at 13.

antennas establish connections to users.[43] AT&T Wireless expects wireless carriers' dependence on ILEC facilities to increase in the future as wireless carriers expand their networks.[44] It also should not be overlooked that the two largest nationwide wireless carriers, Verizon Wireless and Cingular, both are BOC affiliates. In rejecting claims that the presence of wireless services would prevent the exercise of market power by a dominant local carrier in Argentina, Telecom Argentina, the FCC's International Bureau itself recently noted that "wireless carriers would be in a position to prevent Telecom Argentina from exercising market power *only if they were independently owned*."[45]

SBC also wrongly claims that wireless services effectively compete with bundled wireline services. SBC contends that consumers could obtain "the exact same functionality via wireless service as is available from wireline service" by having "a single wireless phone that is not removed from the house," but SBC fails to show how a wireless phone can provide an effective substitute for the receipt of inbound calls in the 68 percent of U.S. homes with multiple floors without the multiple extensions that are available with wired phone service.[46] For these and other reasons, AT&T predicted that wireless LNP was "not likely to significantly increase substitutability," as shown by the fact that few consumers take the opportunity to drop wired phone service when they move to a new home. (AT&T *ex parte*, p. 9.)

SBC claims otherwise on page 15 of its response. ("Recent developments, such are wireline/wireless number portability . . . will only increase the substitutability of these technologies.") But elsewhere, SBC admits that very few consumers have used wireless LNP to move their wired number to their wireless phone. (*See Demand lacking for home-to-cell phone number moves*, Chicago Tribune, Dec. 10, 2003 ("Local phone companies had predicted that hundreds of thousands -- possibly even millions -- of customers would abandon wired phone service when new federal rules allowing such a switch took effect two weeks ago. *But the number who actually have taken the plunge is very small, numbering in the hundreds, SBC Communications, Inc. reported Tuesday.*" (emphasis added).) Similarly, SBC told its November analyst meeting that "[c]ustomers want both" wireless and wireline services.[47] Even SBC Chairman and CEO Edward Whitaker admits that "wireless is not going to displace the wireline network" and is "*never* going to be the substitute. Reliability is one reason."[48]

AT&T has made clear (p. 6) that it does not deny the existence of substitution between wireline and wireless long-distance services. However, AT&T has shown, without contradiction by SBC, that all-distance wireless packages place little constraint on the pricing of all-distance wireline packages because the incremental price for long-distance calling in wireline packages is low and BOCs can increase the overall price of

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[43] AT&T Wireless Comments at 8.
[44] *Id.*
[45] *AmericaTel Corp. & Telecom Italia of North America, Inc.*, File Nos. ITC-MOD-20020502-00212 & ITC-MOD-20020502-00213, Memorandum Opinion and Order, rel. Dec. 30, 2003, at ¶ 20 (emphasis added).
[46] SBC at 14-15; AT&T at 7-8.
[47] SBC Communications Analyst Meeting, Nov. 13, 2003, Final Transcript at 12.
[48] *Business Week Online*, Oct. 20, 2003 (emphasis added).

all-distance wireline packages by increasing the price of the calling feature elements and holding the unlimited long distance price differential constant. (AT&T *ex parte* at 9.)

To prevent the anticompetitive leveraging of local bottlenecks in this and other ways until other essential reforms are completed, the Commission's requirement for tariff and cost support filings for interstate services provided by dominant carriers, with the additional modifications proposed by AT&T to address particular cross-subsidization concerns, should apply to BOC long distance services provided on an integrated basis after sunset of section 272. This straightforward application of Commission rules governing interstate services provided by dominant carriers is required under any analysis of the benefits of such regulation against any resulting burdens.[49] It also is required by U.S. multilateral trade obligations in telecommunications services, under the WTO General Agreement on Trade in Services, to maintain appropriate measures to prevent anticompetitive practices by "major suppliers" such as the BOCs, including preventing them from "engaging in anticompetitive cross-subsidization."[50]

Consistent with section 1.1206 of the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the above-referenced proceeding.

Respectfully submitted,

cc:	M. Carowitz	W. Kehoe
	B. Childers	P. Megna
	R. Crittendon	J. Minkoff
	W. Dever	B. Olson

[49] AT&T Comments at 74, citing *Comsat Corp.*, 13 FCC Rcd. 14083, ¶ 153 (1998); AT&T Reply Comments at 42-47.

[50] United States, Schedule of Specific Commitments, World Trade Organization, Fourth Protocol to the General Agreement on Trade in Services, GATS/SC/90/Suppl.2, Apr. 15, 1997, Attachment to the United States Schedule, Reference Paper, Section 1.1 ("Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.") & Section 1.2 ("The anticompetitive practices referred to above shall include in particular: (a) engaging in anticompetitive cross-subsidization.")